

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Allen Beck; Daphne Beck; Sally K.
Shortridge

CASE 41K-0124-R-2023

41K 96423-00
41K 93424-00
41K 96425-00
41K 96427-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remarks:

41K 96423-00 and 41K 96425-00:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41K 96424-00:

THE TIMELY FILED OBJECTIONS TO THIS CLAIM WERE AMENDED TO INCLUDE FLOW RATE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41K 96427-00:

THE TIMELY FILED OBJECTION TO THIS CLAIM WERE AMENDED TO INCLUDE PERIOD OF USE, POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNESE SEC 35 TWP 20N RGE 7W LEWIS AND CLARK COUNTY.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SMITH CREEK WITH A PRIORITY DATE PREDATING CASE NO 4742, CASCADE COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

These remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

The issue remarks on claims 41K 96423-00, 41K 96424-00 and 41K 96425-00 variously state that if no objections were filed, the element identified in the remark would remain as it appeared in the decree. Two issue remarks on claim 41K 96427-00 state the same. No objections were filed to any of the claims.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On May 4, 1998 a Master's Report was issued for case 41K-213 that included information and findings of fact regarding claim 41K 96427-00. Specifically, the Report made a correction to the claim at claimant's behest modifying the point of diversion to reflect historical use. An Order Amending and Adopting Master's Report was issued on December 10, 1998 without changes to the revised point of diversion for claim 41K 96427-00.

FINDINGS OF FACT

1. Pursuant to the May 4, 1998 Master's Report and December 10, 1998 Order Amending and Adopting Master's Report, the point of diversion for claim 41K 96427-00 decreed in the Preliminary Decree reflects historical use of the claim.
2. The point of diversion remark on claim 41K 96427-00 should be removed as it fails to overcome the findings in the May 4, 1998 Master's Report.
3. The remaining remarks on the claims are notice-type remarks that have served their purpose and should be removed from the claims.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The point of diversion issue remark on claim 41K 96427-00 should be removed from the claim as the underlying issue identified by the remark was previously addressed by this Court and the issue has been resolved.
2. The remaining issue remarks are notice-type remarks that have served their purpose and should be removed from the claims.

RECOMMENDATION

1. Upon review the record in this case, the issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Allen Beck
Daphne Beck
78 1st Lane NE
Fairfield, MT 59436-9355

Sally K. Shortridge
P.O. Box 333
Augusta, MT 59410

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 96423-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SALLY K SHORTRIDGE
PO BOX 333
AUGUSTA, MT 59410 0333

ALLEN BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

DAPHNE BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

Priority Date: MARCH 31, 1871
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 224.40 GPM
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 5 - LOW
***Maximum Acres:** 55.00
Source Name: SMITH CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENSW	34	20N	7W	LEWIS AND CLARK

***Period of Diversion:** MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: BOHLER DITCH

***Period of Use:** MARCH 1 TO NOVEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	27.50		SE	34	20N	7W	LEWIS AND CLARK
2	27.50		W2SW	35	20N	7W	LEWIS AND CLARK

Total: 55.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 96424-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SALLY K SHORTRIDGE
PO BOX 333
AUGUSTA, MT 59410 0333

ALLEN BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

DAPHNE BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

***Priority Date:** JUNE 1, 1883
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 1.25 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 5 - LOW
***Maximum Acres:** 76.00
Source Name: ELK CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	2	19N	7W	LEWIS AND CLARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	MOSHER-BOHLER DITCH					
Period of Use:	JANUARY 1 TO DECEMBER 31					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	76.00		S2	35	20N	7W	LEWIS AND CLARK
Total:	76.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96424-00

96425-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 96425-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SALLY K SHORTRIDGE
PO BOX 333
AUGUSTA, MT 59410 0333

ALLEN BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

DAPHNE BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

***Priority Date:** MARCH 1, 1883
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 2.50 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 5 - LOW
***Maximum Acres:** 76.00
Source Name: ELK CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		NESWNE	2	19N	7W	LEWIS AND CLARK	
Period of Diversion:	MARCH 1 TO NOVEMBER 30						
Diversion Means:	HEADGATE						
Ditch Name:	MOSHER-BOHLER DITCH						
Period of Use:	MARCH 1 TO NOVEMBER 30						
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	76.00		S2	35	20N	7W	LEWIS AND CLARK
Total:	76.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96424-00

96425-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 96427-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SALLY K SHORTRIDGE
PO BOX 333
AUGUSTA, MT 59410 0333

ALLEN BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

DAPHNE BECK
78 1ST LN NE
FAIRFIELD, MT 59436 9355

Priority Date: FEBRUARY 2, 1889
Type of Historical Right: USE
***Purpose (use):** DOMESTIC
Flow Rate: 50.00 GPM
Volume: 2.00 AC-FT
Climatic Area: 5 - LOW
Maximum Acres: 1.00
***Source Name:** SMITH CREEK
Source Type: SURFACE WATER
***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		SWNESE	35	20N	7W	LEWIS AND CLARK	
*Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: PUMP							
*Period of Use: JANUARY 1 TO DECEMBER 31							
*Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		NESENE	35	20N	7W	LEWIS AND CLARK
Total:		1.00					